

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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LOUISE DEMARCO,

Plaintiff,

CV 12-0573

-against-

ANSWER

BEN KRUPINSKI, GENERAL  
CONTRACTOR, INC. and BEN KRUPINSKI,  
Individually,

(Feurstein, J.)

Defendant.  
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Defendants, BEN KRUPINSKI, GENERAL CONTRACTOR, INC. and BEN KRUPINSKI, individually, by their attorney, MICHAEL M. McCLELLAN, ESQ., answering Plaintiff's complaint allege the following:

1. Deny the allegation in paragraph 1 of the Complaint that the Defendant was motivated by discriminatory animus or in any way violated the American with Disabilities Act, 42 U.S.C. § 12101, the Family Medical Leave Act; New York State Human Rights Law or New York Executive Law, § 296 et. seq
2. Defendants admit that the Plaintiff, Ms. DeMarco was employed by the Defendant, Ben Krupinski, General Contractor, Inc. ("BKGCI") from August 2006 to March 2011 as a receptionist. Defendants deny she performed her job satisfactorily.
3. Deny the allegations contained in paragraph 3 of the Complaint.
4. Deny the allegations contained in paragraph 4 of the Complaint.
5. Have no information to admit or deny paragraph 5.
6. Defendants admit the allegations in paragraph 6 of the Complaint.
7. Upon information and belief, deny allegations in paragraph 7 of the complaint.

8. Defendants deny allegations in paragraph 8 that the Defendant ever even requested an "accommodation" under the Americans with Disabilities Act for her employment.
9. Defendants deny allegations in paragraphs 9 & 10 of the Complaint.
10. Defendants admit paragraph 11.
11. Defendants deny paragraph 12 to the extent that the Plaintiff was not at work for nearly 100 days in the last year of her employment.
12. Defendants have no personal knowledge to admit or deny the statement of Plaintiff's illness.
13. Upon information and belief, Defendants admit that Plaintiff underwent surgery on or about November 8, 2010.
14. Defendants have no information to admit or deny paragraph 15 of the Complaint.
15. There is insufficient information of dates to admit or deny Plaintiff's allegation in paragraph 16 of the Complaint.
16. Defendants deny allegations in paragraphs 17 thru 24 as self-serving and not in accordance with the actual facts.

**AS FOR AN ANSWER TO THE FIRST CAUSE OF ACTION**

17. Defendants deny paragraphs 25 thru 34 of Plaintiff's Complaint.

**AS FOR AN ANSWER TO THE SECOND CAUSE OF ACTION**

18. Defendants deny paragraphs 35 thru 39 of Plaintiff's Complaint.

**AS FOR AN ANSWER TO THE THIRD CAUSE OF ACTION**

19. Defendants deny paragraphs 40 thru 46 of Plaintiff's Complaint

**AS FOR A FIRST AFFIRMATIVE DEFENSE**

20. Plaintiff fails to state a claim upon which relief can be granted.

**AS FOR A SECOND AFFIRMATIVE DEFENSE**

21. Plaintiff resigned her employment of her own volition on March 18, 2010.

**AS FOR A THIRD AFFIRMATIVE DEFENSE**

22. Plaintiff never requested an accommodation for her employment pursuant to the American with Disabilities Act.

**AS FOR A FOURTH AFFIRMATIVE DEFENSE**

23. Plaintiff never requested in writing a leave under the Family Medical Leave Act as is required by statute.

**AS FOR A FIFTH AFFIRMATIVE DEFENSE**

24. Defendant paid the Plaintiff for 87 days in 2010 and an additional 47 days in 2011 when Defendant was not at work.

**AS FOR A SIXTH AFFIRMATIVE DEFENSE**

25. The Defendants acted in good faith by compensating the Plaintiff 134 days that she was not at work. Additionally, they acted in accordance with the employment-at-will doctrine when the Plaintiff resigned her employment.

**AS FOR A SEVENTH AFFIRMATIVE DEFENSE**

26. Plaintiff is barred by statute of limitations because she did not file a timely complaint.

WHEREFORE, Defendants BEN KRUPINSKI GENERAL CONTRACTORS, INC. and BEN KRUPINSKI individually demand judgment against the Plaintiff

dismissing Complaint, together with costs, disbursements, and such other relief as the court shall deem just and proper.

Dated: Hauppauge, New York  
March 19, 2012

Respectfully submitted,  
MICHAEL M. McCLELLAN, ESQ.  
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By: 

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